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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

42390.P7956

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on 7/25/05

Signature RLB

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Application Number

09/540,239

Filed

March 31, 2000

First Named Inventor

Rick Dedrick, Et Al.

Art Unit

3627

Examiner

Michael A. Cuff

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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July 25, 2005

Date

Registration number if acting under 37 CFR 1.34 _____

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/540,239 Confirmation No. 1914
Applicant : Rick Dedrick
Filed : March 31, 2000
TC/A.U. : 3627
Examiner : Michael A. Cuff

Docket No. : 042390.P7956
Customer No. : 008791

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ARGUMENT IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Pre-Appeal Brief Request For Review filed herewith, please consider the following remarks. Applicant requests review of several clearly improper rejections based upon Examiner Cuff's material errors in facts and material omission of essential claim elements in order to establish a rejection. Applicant will be filing an appeal brief concerning errors in claim interpretation, but some or all of this appeal may be rendered moot by the present request for a pre-appeal review.

Regarding the claims, they generally concern an e-commerce type of environment in which items may be deposited into an electronic shopping cart, and where "a distribution package" may be created based on the contents of the shopping cart. Regarding claim 1 in particular, this embodiment recites "receiving a list of goods available for electronic and/or physical distribution to a client."

In response to the claims, the Examiner improperly gives an omnibus rejection lacking adequate support by stating "Schmidt et al. shows all of the limitations of the

claims except for specifying selecting goods and the user of a public key." Applicant has attempted to argue, without success, that Schmidt has no teaching or hint of a teaching of the recited embodiments.

In particular, for example, there is no teaching or hint of teaching the recited "goods available for ... physical distribution." While the claim language does state "electronic and/or physical distribution," this is still a limitation in that the recited list of goods must be able to present both types of distributable goods. There is no teaching in Schmidt of an environment allowing for electronic and/or physical distribution of goods as recited. It is respectfully submitted that the Examiner intentionally ignores this limitation, and this constitutes a material omission of an essential claim element in order to establish the present rejections.

Other independent claims also have a physical distribution limitation. For example, claim 7 recites "a list of goods available for electronic and physical distribution to a client." Claim 25 recites "assembling, based at least in part on the identifier, a list of goods available for electronic and/or physical distribution to a user-client." Claim 29 recites "a client connecting to a distribution server having associated packages, each package identifying selected ones of electronic and physical goods and updates thereto, and each package having an associated access control set by a creator of the package." Dependent claims 5, 6, 11, and 12 also recite "physical." As with claim 1, it is respectfully submitted that the Examiner intentionally ignores the physical limitation, and this constitutes a material omission of an essential claim element in order to establish the present rejections.

Regarding claim 13, the Office admits Schmidt fails to teach selecting goods (which is obvious since the Examiner has failed to cite a case relating to the subject matter being claimed). Since all claimed embodiments recite selecting goods for placement into an electronic shopping cart, based on the Examiner's own admissions, Applicant submits it is a material defect in the Office Action to then seek to reject the claims based on the omnibus rejection discussed above. Similar issues are present in the rejection of claim 17.

For at least these reasons, Applicant requests that the rejections be reviewed preliminarily reviewed prior to instituting the full appeal process. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Date: JULY 25, 2005



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